

## OFFICE OF SPECIAL MASTERS

(Filed: February 6, 2007)

DO NOT PUBLISH

SHERRI LYNN BOOTHBY,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 00-0371V
	)	Attorneys' Fees; Attorneys' Costs;
SECRETARY OF	)	Personal Expenses
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

### DECISION ON ATTORNEYS' FEES, ATTORNEYS' COSTS AND PERSONAL EXPENSES<sup>1</sup>

Petitioner, Sherri Lynn Boothby (Ms. Boothby), seeks an award of attorneys' fees, attorneys' costs and personal expenses as defined by General Order No. 9 for an action that she pursued successfully under the National Vaccine Injury Compensation Program (Program).<sup>2</sup> Ms. Boothby filed an initial application for attorneys' fees, attorneys' costs and personal expenses as defined by General Order No. 9 on October 10, 2006. She requested \$56,627.30. *See* Application for Attorneys' Fees & Costs (Fee Petition), filed October 10, 2006, at 2.

Ms. Boothby received Program compensation. Therefore, the Act mandates the award of "reasonable attorneys' fees" and "other costs." § 300aa-15(e)(1). Nevertheless, respondent

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<sup>1</sup> As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

<sup>2</sup> The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

contested four aspects of the Fee Petition. *See generally* Respondent's Opposition to Petitioner's Application to Attorneys' Fees and Costs (Opposition), filed December 6, 2006. First, respondent objected to Ms. Boothby's "excessive" use "of experts/consultants." Opposition at 1. Second, respondent objected to the number of hours that Ms. Boothby's experts claim. *See* Opposition at 1. Third, respondent objected to "the hourly rate for [Ms. Boothby's] expert/consultant," Mark R. Geier, M.D. (Dr. Geier). Opposition at 1. Fourth, respondent objected to Ms. Boothby's "excessive personal travel costs." *Id.* Respondent offered few, if any, specific arguments supporting respondent's Opposition. *See generally* Opposition. Likewise, respondent offered no recommendations for specific reductions to the Fee Petition. *See generally* Opposition. Rather, respondent invited simply the special master to "exercise his broad discretion" in fashioning "a reasonable award for fees and costs." *Id.*

The special master convened an informal, yet substantive, status conference on January 19, 2007. He reviewed the Fee Petition. He provided guidance regarding the parties' disputes.

On February 5, 2007, Ms. Boothby amended her Fee Petition. *See* Amended Application for Attorneys' Fees & Costs (Amended Fee Petition), filed February 5, 2007. Ms. Boothby withdrew all charges related to Dr. Geier. *See* Amended Fee Petition, Exhibit 1. Ms. Boothby reduced her request for travel expenses. *See* Amended Fee Petition, Exhibit 1. Ms. Boothby seeks now \$55,019.50. *See* Amended Fee Petition, Exhibit 1.

The special master has considered carefully Ms. Boothby's Fee Petition, respondent's Opposition and Ms. Boothby's Amended Fee Petition. Although the special master was only responsible for the merits of the case from August 10, 2005, *see Boothby v. Secretary of HHS*, No. 00-0371V, Order of the Chief Special Master (Fed. Cl. Spec. Mstr. Aug. 10, 2005), to May 24, 2006, *see Boothby v. Secretary of HHS*, No. 00-0371V, Decision Directing Entry of Judgment (Fed. Cl. Spec. Mstr. May 24, 2006)—slightly more than nine months out of the nearly six years that the petition was pending on the merits in the Office of Special Masters—he approves Ms. Boothby's Amended Fee Petition, based upon his experience. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in Ms. Boothby's favor for \$55,019.50. The judgment shall reflect that Ms. Boothby's attorney of record, Clifford J. Shoemaker, Esq. (Mr. Shoemaker), may collect \$53,796.49 from Ms. Boothby.<sup>3</sup> Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

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<sup>3</sup> \$55,019.50 - \$1,223.01 for Ms. Boothby's personal expenses as defined by General Order No. 9.

The clerk of court shall send Ms. Boothby's copy of this decision to Ms. Boothby by overnight express delivery.

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John F. Edwards  
Special Master